

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1256 of 2007

Chandru alias Chandrasekar .. Petitioner

Vs.

1. The Commissioner of Police
Greater Chennai
Chennai - 600 008.
2. The Secretary to Government
Government of Tamilnadu
Prohibition and Excise Department
Fort St.George, Chennai-9. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.C.Venkatesalu
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Challenging the order of detention dated 16.6.2007 made in No.244/2007, passed by the first respondent branding the petitioner as a 'Goonda' under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the petitioner, who is now confined in Central Prison, Puzhal, Chennai, has filed this Habeas Corpus Petition to set aside the order of detention and directing the respondents to produce him before this Court and set him at liberty.

2.1. The order of detention dated 16.6.2007 was passed on the basis of ground case in Crime No.334 of 2007 for alleged commission of offences under Sections 147, 148, 341, 336, 427, 395 read with 397, 506(2) and 307 IPC, complaint of which was lodged by one Dhanasekaran. According to Dhanasekaran, who himself is involved in murders and has come out on bail during 2006, there is prior personal enmity between the detenu and the complainant. On 29.5.2007 at about 0900 hours, when the complainant was proceeding at Ennore Express Road and 9th Street near Mahalingam Cool Drink Shop, the detenu and four of his associates wrongfully restrained him, threatened him and voluntarily inserted hand into his shirt pocket at the point of knife and took away Rs.1000/-. The detenu rushed to cut him over his neck, which the complainant warded off with his left hand, and the same caused bleeding injury to him. Huge crowd gathered at the spot. The complainant with the help of the public tried to apprehend the detenu and his associates, but they threatened them and picked up cool drink bottles and hurled the same on the road and created panic and the bottles fell on the road and broke into pieces. The public who were at the spot noticed the atrocious activities and ran hither and thither for safer places out of fear of danger to their lives and properties. The detenu and his associates escaped from the spot. Based on the complaint given by the complainant a case, as stated above, was registered and the Inspector of Police, after investigation, arrested the detenu and his associates.

2.2. Apart from the above, the detaining authority also took note of the three adverse cases pending against the detenu, viz., Crime Nos.156 of 2004, 824 of 2006 and 331 of 2007, all registered on the file of Ennore Police Station for the offences punishable under Sections 147, 148, 294(b), 341, 326, 427, 448, 452, 506(ii) and 506(ii) IPC read with Section 3(1) of PPD Act.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. The main contention of the learned counsel for the petitioner is that even though in the grounds of detention dated 16.6.2007, for considering the possibility of the detenu coming out on bail two Crime Nos.334 and 331 of 2007 were referred to, the detaining authority has not furnished the documents viz., arrest and remand particulars with respect to Crime No.331 of 2007 to detenu, and there is no material available on record to justify that such materials with respect to Crime No.331 of 2007 were placed before the detaining authority for its consideration.

4. We heard Mr.N.R.Elango, learned Additional Public Prosecutor and also perused the materials available on record.

5. A perusal of the grounds of detention reveals that the detaining authority, while considering the likelihood of the detenu coming out on bail has referred to two Crime Nos.334 and 331 of 2007. Even though the arrest and remand particulars with respect to Crime No.334 of 2007 were available on record along with the grounds of detention, the arrest and remand particulars with respect to Crime No.331 of 2007 were not available on record, nor the same were supplied to detenu, which would, in our considered opinion, deprive the detenu of making an effective representation.

For the reasons aforesaid, the impugned order of detention is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 16.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary to Government
State of Tamilnadu
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The Commissioner of Police
Greater Chennai
Chennai-600 008.
3. The Superintendent
Central Prison , Puzhal,
Chennai.

4. The Joint Secretary to Government
Public (Law and order)
Fort Saint George, Chennai-9.

5. The Public prosecutor,
High Court, Madras.

1 cc to Mr.C. Venkatesalu, Advocate, SR. 68827

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